

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTEENTH REGION

West Central Electric Cooperative, Inc.<sup>1</sup>

Employer

and

Case 17-RC-12181

Graybar Electric Company, Inc.<sup>2</sup>

Employer

and

International Brotherhood of Electrical Workers, Local 53,  
AFL-CIO<sup>3</sup>

Petitioner

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Acting Regional Director.

Upon the entire record in this proceeding, the undersigned Acting Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer West Central Electric Cooperative, Inc. is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) (7) of the Act for the following reasons:

The Employer, West Central Electric Cooperative, Inc., hereinafter WCE, is a Missouri corporation engaged in the retail sale of electricity for industrial, residential and commercial use.

WCE is headquartered in Higginsville, Missouri with branch offices in Oak Grove and

Warrensburg, Missouri. The Petitioner currently represents the following unit of WCE

employees: all full-time and regular part-time electrical maintenance and force account

construction employees, but excluding officers, clerical, supervisory, professional, secretarial

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<sup>1</sup> The Employer's name, West Central Electric Cooperative, Inc., appears as amended at the hearing.

<sup>2</sup> The Employer's name, Graybar Electric Company, Inc., appears as amended at the hearing.

<sup>3</sup> The Petitioner's name appears as amended at the hearing.

employees and all other employees. The National Labor Relations Board certified the foregoing unit on March 30, 1965 in Case 17-RC-4723. WCE currently employs 43 unit and non-unit employees.

The Employer, Graybar Electric Company, Inc., hereinafter Graybar, is a Delaware corporation engaged in the wholesale distribution of electrical communications and data products. In November 2001, WCE and Graybar entered into an “on-site stocking agreement”, which requires Graybar to provide electrical materials and equipment to WCE from a warehouse owned by WCE and located at WCE’s headquarters in Higginsville. More specifically, the warehouse is located across a parking lot from the WCE main facility. The stocking agreement also requires that Graybar staff the warehouse with an employee responsible for the receipt, distribution, and tracking of those materials. Employee Robert Fischer currently holds this position.

The Petitioner seeks a self-determination election to include Fischer into the existing bargaining unit of WCE employees.<sup>4</sup> In support of its petition, Petitioner makes the following arguments: 1) WCE and Graybar are joint employers of employee Fischer; 2) Fischer shares a community of interest with the WCE employees currently represented by Local 53; and 3) the position held by Fischer may constitute an appropriate residual unit. As discussed in greater detail below, I find that WCE and Graybar are not joint employers, Fischer does not share a community of interest with the present unit, and there is insufficient evidence to conclude that the position held by Fisher constitutes a residual unit.

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<sup>4</sup> The Petitioner contends that Fischer’s job classification is “material handler,” while WCE maintains that Fischer’s classification is “on-site representative.” Although no agreement was reached at the hearing regarding the classification nomenclature, it is undisputed that the only classification in question is the position held by Fischer.

*Bargaining History*

WCE and the Petitioner have a collective-bargaining relationship dating back to 1965. That relationship has been embodied in successive collective-bargaining agreements between the parties. The collective-bargaining agreement effective from January 1, 1998, through January 1, 2001, provided for the position of materials clerk. During that same period, employee A. J. Giorza held the materials clerk position. The materials clerk was charged with the receipt, distribution, and tracking of materials used in the performance of WCE work, as well as occasional janitorial duties at the WCE facility. Prior to the execution of the most recent collective-bargaining agreement, employee Giorza left the employment of WCE. The most recent collective bargaining-agreement does not provide for the position of materials clerk.<sup>5</sup>

*Fischer's Employment History*

Robert Fischer began working for Graybar in about September 1996. During the first part of Fischer's career, he performed work out of Graybar's Kansas City facility. In about late 2001, Fischer was transferred to the WCE facility to perform services consistent with the on-site stocking agreement between WCE and Graybar. During the entire tenure of Fischer's employment he has been subject to Graybar policies and procedures. Graybar sets Fischer's wages, and he receives the same benefits as other Graybar employees. Graybar maintains Fischer's personnel file. Donna Mehrhoff, Graybar Manager of Customer Service, supervises Fischer. Mehrhoff performs Fischer's annual appraisal.

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<sup>5</sup> The record testimony is unclear regarding the timing of the execution of the most recent collective-bargaining agreement, in relation to the execution of the on-site stocking agreement between WCE and Graybar. The stocking agreement was entered into in November 2001. The most recent collective-bargaining agreement is effective by its terms January 1, 2001 through January 1, 2003, but did not receive the approval of the International Union until May 7, 2002. I am, therefore, unable to determine if the materials clerk position was bargained out of the Unit, or was omitted because there was no employee holding that position at the time the agreement was negotiated.

Fischer reports to work each morning at the WCE warehouse at 7:30 a.m. and works until 4:30 p.m. Fischer's hours are concurrent with the operating hours of WCE. After reporting to work, Fischer obtains staking sheets from WCE line superintendent Mike Gray. The staking sheets indicate the type of work to be performed by the WCE linemen. Fischer then uses these staking sheets to pull materials for the lineman, which he places in materials buckets. On occasion, Fischer may use a WCE forklift or WCE delivery truck to pull and deliver materials. While Fischer receives the staking sheets from WCE supervisors, there is no evidence that those supervisors direct how Fischer fills the orders, or otherwise supervise the performance of any of his work.

After Fisher has pulled the materials, linemen pick them up and leave for their respective job sites. Linemen are absent from the WCE facility for the majority of the day, performing electrical construction and repair in the field. WCE provides Fischer with a WCE radio to communicate with linemen in the field. However, Fischer testified that he uses the radio infrequently, typically less than once a month.

Fischer tracks the materials that he has supplied to WCE on a computer system provided by Graybar. Fischer then uses this system to invoice WCE for the materials twice a month. Fischer does not have access to WCE computers, and WCE does not have access to Fischer's Graybar computer. Graybar provides Fischer with an e-mail address that he uses to communicate on a nearly daily basis with Graybar supervision. WCE provides Fischer with a phone line. Fischer also communicates by phone almost daily with Graybar supervision. Although Fischer does not have an on-site supervisor, testimony adduced at the hearing suggests that various officials of Graybar visit the WCE facility on a reoccurring basis.

When Fischer is not filling orders or tracking materials, he may work on preparing materials for distribution at a later date. For instance, Fischer occasionally builds meter loops that are later used and installed by WCE line crews. There is some assembly required in the building of the loops, such as cutting pipe and connecting wire. Fischer has occasionally received help from WCE employees in the building of the loops.

Fischer has any absences exceeding about two hours approved by Graybar supervision. For longer absences, Graybar sends a replacement employee to staff the warehouse. Fischer notifies WCE of all absences, but this is done as a courtesy, as WCE does not have authority to approve or disapprove Fischer's leave. On occasions when Fischer is gone for a couple of hours or less, WCE employees may come into the warehouse and take materials they need to perform their work. When they take such materials, they leave a copy of the staking sheet for Fischer indicating the materials they have taken. Fischer then enters these purchases into the Graybar computer system, so they can be properly invoiced.

*WCE and Graybar are not joint employers of employee Fischer*

As the Petitioner correctly points out in its brief, employee Fischer can only be included in the bargaining unit if WCE and Graybar are found to be joint employers, and if Fischer is found to share a community of interest with the other employees in the WCE bargaining unit. In order to establish that WCE and Graybar are joint employers of Fischer, the Petitioner must demonstrate that WCE and Graybar co-determine matters governing essential terms and conditions of Fischer's employment. *See M.B. Sturgis, Inc.*, 331 NLRB 1298 (2000), citing *NLRB v. Browning Ferris Industries*, 691 F.2d 1117, 1123 (3d Cir. 1982). In making this factual determination, the Board typically examines matters relating to the employment relationship such as hiring, firing, discipline, supervision and direction. *Service Employees International*

*Union, Local 254*, 324 NLRB 743, 748 (1997). An examination of the evidences demonstrates that WCE has no meaningful impact on any of these matters. WCE did not assist in the decision to hire Fischer, nor is there evidence that they participated in the decision to have Fischer transferred from the Kansas City location to the WCE facility. Further, there is no evidence that WCE could have Fischer terminated from his position at Graybar or impose discipline on Fischer. The Petitioner elicited some evidence that WCE could ask Graybar to remove Fischer from WCE premises if Fischer came to work intoxicated. However, the same could be said for any employee of an employer with whom WCE has a client relationship, for instance a UPS driver. The absence of daily Graybar supervision at the WCE facility is not dispositive of the issue of Fischer's supervision. *See Local 254 supra*. The evidence discloses that Fischer is in daily contact with his Graybar supervisors, and there is no evidence that any WCE official reviews or oversees Fischer's work. All appraisals of Fischer's work are completed by Graybar supervision. Similarly, while Fischer may discuss the staking sheets with WCE supervisors and employees, there is no evidence that such supervision directs how Fischer fills the orders in connection with those sheets. Based on a review of all the relevant factors, it has not been established that WCE and Graybar are joint employers of employee Fischer.

Because I have determined that WCE and Graybar are not joint employers of Fischer, it is unnecessary to determine if Fischer shares a community of interest with the other employees in the WCE bargaining unit, or if Fischer's position would qualify as a valid residual unit. Nevertheless, I make the following findings regarding these issues. Based upon many of the same factors that indicate that WCE is not Fischer's employer, I find that Fischer does not share a significant community of interest with the employees in the WCE bargaining unit. In making community of interest determinations, the Board examines factors such as common supervision,

bargaining history, employee skills, employee interchange, and similarity in wages, hours, benefits and other terms and conditions of employment. *See J.C. Penney Co.*, 328 NLRB No. 105 (1999). WCE does not supervise employee Fischer, and Fischer therefore has no common supervision with WCE bargaining unit employees. While there was a material handler position pursuant to the previous collective-bargaining agreement, there is little evidence that Fischer performs the same functions. With respect to integration and interchange, the record demonstrates that Fisher does not perform the same work as the represented employees. Unit members occasionally take supplies from the warehouse when Fischer is absent, but they do not track or otherwise monitor those materials, leaving that work function solely with Fisher. With respect to skills, Fisher is not a certified journeyman, as are the unit employees, and he does not perform similar work or employ similar skills in the filling and tracking of materials orders as those skills used by bargaining unit employees in performing electrical construction and maintenance. Any minor electrical type work performed by Fischer, such as the building of meter loops, is only incidental to his duty of providing the lineman with materials. Fischer does have similar hours to unit employees, but this is to be expected under the stocking agreement, which requires Graybar to provide materials at times that are convenient to WCE. *See Local 254 supra*. Finally, Fischer does not share the same benefits as other employees, and is housed in a separate facility. Reviewing all the relevant factors, the Petitioner has not demonstrated that Fischer shares a significant community of interest with the WCE bargaining unit employees.

The Petitioner also appears to argue that Fischer's position may constitute an appropriate residual unit, claiming that Fisher is the only unrepresented non-clerical, non-supervisory employee working at WCE. Contrary to the Petitioner's contention, a review of the documents provided at the hearing suggests that there are other non-clerical, non-supervisory employees

who are unrepresented, including two staking technicians, two meter readers, and a computer/mapping technician. There is no evidence concerning these positions in the record. The record is insufficient to determine what a proper residual unit might be. Moreover it is unnecessary to make this determination, because I have found that Fischer is not an employee of WCE.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by May 23, 2003.

Dated May 9, 2003

at Overland Park, Kansas

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Acting Regional Director, Region 17

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